IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Contempt Petition No. 3/2003

Indian Christian Mission ……Applicant

Vs

Sri Girija Shankar Pandey, Divisional Forest Officer, Tarai (East) …….Opposite Party

Sri V.B.S. Negi Advocate for petitioner.
Sri Sudhanshu Dhulia, Senior Advocate and
Sri Pitamber Maulekhi Additional Advocate General for Opposite Party.

Hon'ble P.C. Pant - J

1. This contempt petition has been moved under section 12 of Contempt of Courts Act 1971 against the opposite party, complaining disobedience of this court's order dated 19.12.2002 passed in Writ Petition No.767 of 2001.

2. I heard learned counsel for the parties and perused the affidavits, counter affidavits, rejoinder affidavit and supplementary affidavits along with annexures annexed thereto.

3. The impugned order dated 19.12.2002 passed by writ petition no.767 (M/B) of 2001 reads as under :-

"Heard Sri B.P.S. Kandpal, learned counsel for the petitioner and Sri B.D. Kandpal, learned standing counsel.

The petitioner has applied for cutting of trees. The application is pending. Therefore, he filed the instant petition.

Learned Standing Counsel made a statement that the permission has been granted and it is open for the petitioner to cut the trees according to rules and regulations.

In view of this, the petition is disposed of.

Sd/- *Sd/- M.M. Ghildiyal,J.*

4. The Divisional Forest Officer, Tarai (East) and District Magistrate, Champawat were the two respondents in aforesaid writ petition. The present opposite party is posted as Divisional Forest Officer, Tarai (East). In response to the notices issued by this Court, the opposite party has filed a counter affidavit in which it has been stated that disputed land is a reserve forest land and averments contrary it made by the petitioner are wrong. It is further stated in the counter affidavit that the statement recorded by the court, in the impugned order made, by the learned standing counsel on 19.12.2002, appears to have been given due to in advertence on his part. It is further stated in the Para-9 of the counter affidavit that the District Magistrate has wrongly misunderstood the land of reserve forest and trees is question as Bhumidhari land of the petitioner. In fact consolidation proceedings can not be initiated on reserve forest land. It is not the District Magistrate, Champawat but the opposite party, Divisional Forest Officer who is authorized to grant to permission to cut the trees. Even in the impugned order, it has been mentioned that the petitioner can cut the trees according to the rules and regulations. The supplementary affidavit has been filed by the Opposite party Girija Shankar Pandey, Divisional Forest Officer on 22.02.2004 and annexures has been annexed thereto showing that the permission sought by the petitioner, was refused for cutting 50”Khair” trees and 2 “Tun” trees and the refusal was published in the Daily Danik Jagran in the month of April,2003.

5. Learned counsel for the petitioner drew my attention to the provisions of Section 6(3) of U.P. Protection of Trees Act, 1976 and argued that if the permission is not

granting within a period of 90 days, there is deeming clause in the Act which provides that the permission shall be treated to have been granted. I have gone through said provisions of the Law. The Act of the 1976 applies to the private land and not to the reserve forest land. In the counter affidavit opposite party has stated that the disputed land is reserve forest land notified on 15.03.1966 under Section 20 of Indian Forest Act 1927. The learned Counsel for the petitioner submitted that copy of notification which is annexed with the counter affidavit does not include Khasra No. 34 which petitioner claims to be his Bhumidhari land. However, this court feels that it has not to decide the title but the question of wil-ful disobedience of the impugned order. There is no finding in the impugned order as to ownership of land in question as such if the impugned order remained uncomplied with on the ground that disputed trees are within an area of reserve forest land, it can not be said that the opposite party has committed any contempt or wil-ful disobedience of the order complained of.

6. In these circumstances the contempt petition is liable to be dismissed and is accordingly dismissed. Notices are discharged. No order as to costs.

Dated: September 30,2004 **(P.C. Pant – J)**

J.K. Jain